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A HANDBOOK OF COMMERCIAL LAW

COMMERCIAL LAW

The subject of law, *per se*, is much too vast and too technical to interest the average man to whom it means less than his livelihood. The fact, however, that he must base practically every business transaction, major or minor, on legal form necessitates his having some slight, general knowledge of the legal rules which govern commercial dealings of all kinds. From the sale of a bushel of potatoes to the financing of his home or his business, the average business man is constantly affected, favorably or otherwise, by his legal rights as established in commercial law. Since many such laws are founded on public usage, directed toward public good, a man whose sense of fairness, of justice, is keen, who has a considerable fund of what is generally known as "common sense," may drift along for years without becoming entangled in the meshes of legal difficulties, but he may, on the other hand, lose multitudinous opportunities for advancement because he does not recognize them as such. The study of commercial law is actively helpful as well as preventative, although the value of even a little knowledge is of greater importance.

Law consists of regulations established as rules of conduct for all of the people who come within its jurisdiction. Such laws may be es-

tablished by the nation as a whole, or they may be established by the states as individual entities. The nation, as such, does not concern itself much with the ordinary rules of conduct, except such as come directly under national control—the United States mails, for example, or where no other jurisdiction is applicable, as in inter-state commerce. The majority of commercial laws are the laws of the state in which they are operative. While there are many minor variations and differences between states, the regulations of fundamental importance are, to a considerable degree, uniform. Rules may be stated generally with certain noted exceptions for different localities. In addition to such general rules, there are always local regulations with which the average citizen is familiar, or should be, if he is engaged in business of any sort.

Commercial law is administered largely through what are known as civil courts, as opposed to criminal courts, which deal principally with the matters that are classed as crime. Such civil courts are of varying powers, according to location as well as to type. They may deal only with such matters as arise within a township, or a county—or their powers may be more diverse, covering several counties, and, in the higher forms, the entire state.

During the past several years, there has been an increasing tendency to pass statutes embodying all the important legal rules governing the transaction of business. These statutes are called codes and are now existent in many

states. Among those states having such established codes are New York, California, Connecticut, Massachusetts, Louisiana, etc. Such statutes are based, for the most part, on judicial decisions and commercial law will reach its highest point when such codes are made uniform for all states, at least in so far as such uniformity is possible. Business of all kinds is establishing closer contact with the nation as a whole; is losing its purely local characteristics and becoming wider in its territorial scope. For this reason, the inter-state or national transaction of commercial matters is of increasing importance, and will be greatly benefited by the enactment of uniform commercial laws.

Courts are of two general types—the lower, in which cases are tried primarily, and the higher, which are mainly courts of appeal. In some states, civil courts are separate from criminal courts, while in others both sorts of cases are tried before the same judges. In addition to the ordinary civil courts, some states have courts of special powers, known as chancery or equity courts.

Some of the terms most generally used with reference to the various types of courts are defined as follows:

Courts of Record.—Courts in which a record is kept of all judicial proceedings, as opposed to courts of minor importance (Justice of the Peace Courts, etc.) where no written records are made or required.

Courts of Limited Jurisdiction.—Courts in

which the scope of cases to be tried is limited by law. Federal courts represent the highest type of such courts.

Civil Courts.—Courts in which cases involving injury between individuals, such as breach of contract, etc., are tried.

Criminal Courts.—Courts in which cases involving injury to the public as a whole (burglary, murder, etc.) are tried.

Courts of Equity.—Courts where relief not available under common law may be administered. Their principal powers lie in the granting of injunctions, the appointment of receivers, the foreclosure of mortgages, the granting of divorces, etc.

Trial Courts.—Courts where cases are first tried.

Appellate Courts.—Courts of first appeal.

Superior and Supreme Courts.—Courts of final appeal.

Probate or Surrogate Courts.—Courts for the administration of estates.

The majority of cases which the business man finds it necessary to take into court involve either real or personal property. The definitions of these two types of property are given as follows: (A) "Real property is an estate in lands not less than a life estate. It is divided into the following two classes: (1) Estates in fee simple and (2) estates for life. The former are estates of inheritance. A leasehold estate for a term of years is not real property. Neither is a mortgage on real estate.

(B) "Personal property is divided into the following two classes: (1) chattels real and (2) chattels personal. The former consist of leasehold estates in land less than life estates. Chattels personal are subdivided into the following three classes: (a) corporeal movable objects, such as horses, implements, etc., (b) incorporeal rights, such as patents, copyrights, trade-marks, etc., and (c) choses-in-action. The last of these consists of rights against persons, such as rights growing out of ownership in promissory notes, or in other classes of contracts."

The questions which most ordinarily arise to involve the average farmer, merchant or professional man are in regard to Contracts; Agencies, Partnerships or Corporations; Property Rights; Surety, Guaranty and Insurance; Estates; Bankruptcy; Sales, Leases, Mortgages, etc.

Therefore, these will be taken up in the order named, and a simple outline offered of the common law provisions and difficulties of each.

Contracts.—A contract is an agreement between two or more parties which is enforceable at law. A mere agreement, unless it conforms to such provisions as make it enforceable at law, is not a contract. A contract, in its legal meaning, grants certain rights to one or more of the contracting parties involved. In addition contracts are usually construed to mean the refraining from certain acts, as well as the performance. For example, if A agrees to wait a specified period of time for the payment of a debt owed him by B, he has no legal right to

sue for such payment before the expiration of such time. The fact that he has agreed to wait is just as much a part of the contract as B's agreement to pay.

If a contract is broken by one party to it, the other or others have a personal hold upon the party who breaks the contract and may resort to law in order to force the promisor to fulfil his promise, if such action seems necessary or advisable.

The completion of a contract is effected by two steps—an offer and the acceptance of such offer. The terms "offer" and "acceptance" may be open to a misunderstanding which must be interpreted in court, but usage has established certain precedents which are useful in defining them in some cases. For example, the sending out of a price list by any manufacturing or distributing company may not be construed as an obligation upon the company to sell at the prices quoted. The proposition to buy, made in response to such price list, constitutes the offer, and the acceptance, by the seller, of such offer to buy, completes the contract. It has been found advisable, by most sellers, to make this definite by stating that such quoted prices are subject to change without notice, or to prior sale. Or, in other cases, the seller may specify that the prices quoted are not binding until accepted in writing.

The fact that the acceptor of any contract does not read it, or otherwise familiarize himself with its terms, does not usually release him from obligation under such contract. Where definite misrepresentation can be proved, an exception may be noted.

The definite acceptance of an offer ordinarily completes the contract, although such offer may be withdrawn at any time preceding acceptance unless a specified time is part of the offer and consideration has passed to cover it. The fact that a letter or a telegram containing such acceptance is not delivered does not release the party making the offer, provided proof of the sending of the acceptance can be given. The records of the telegraph companies. or carbon copies of written communications, are frequently of great importance in this connection. Once the contract is complete, neither party may withdraw without the consent of the other or others, without becoming liable for legal action.

Consideration, in its legal meaning, may be any one of several things—the waiver of a legal right, forbearance to prosecute, waiver of certain personal rights, the transfer of money, etc. A promise to do something which the promisor is already legally bound to do is not legal consideration. For example—A retains in his possession a ring belonging to B. If B offers a consideration for its return, he is not bound by it legally, as the ring actually belongs to him and A is bound to return it without such consideration. The most popular form of consideration is one dollar, and this phrase and amount is evidenced in numberless contracts of all types.

The attachment of a seal may or may not make a contract binding without consideration. In some states, this is still legal consideration but in the following states there are many ex-

ceptions to this: Alabama, Arizona, Arkansas, California, Colorado, Idaho, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Dakota, Ohio, South Dakota, Tennessee, Utah, Washington. Even in states where the seal is legally binding, the courts have found exceptions to this. Agreements in restraint of trade are examples in point, having been found invalid regardless of such precautions. The value of the consideration passed does not need to be in proportion to the amount involved in the contract. Hence the popularity of the dollar consideration, which has been used to bind transactions involving many, many times that amount. After a contract has been fulfilled, however, the absence of consideration or seal is not ground for its invalidation.

One of the principal bases for the invalidation of contracts lies in illegality of object. A contract completed for the purpose of accomplishing something which is, in itself, against the laws of the state or nation will not stand in court. To be exact, unless the purpose of the contract is legal, there is no contract so far as the law is concerned. Its fulfilment is entirely an individual matter and the man who contracts for a case of Scotch or the murder of his worst enemy—payment in advance—is protected only by "thieves' honor."

Other types of contracts which have little or no standing in law are as follows:

Wagering contracts, such as bets on races. There is one notable exception to this—insurance. Even life insurance is a gamble on the

part of the company, which assumes the risk of paying the full amount should the insured die earlier than expected. Lloyds, insuring sunshine for a big race meet, are even more definite gamblers, but insurance has been placed on a commercial basis. Since this type of wager is for the general good of the public, it is authorized by law, and an insurance contract is entirely legal in every state, provided misrepresentation or some other illegal condition is not present.

Contracts of a purely speculative nature, such as Board of Trade contracts where the buyer has not and cannot obtain possession of the goods which he sells, have little or no legal standing. If a man sells "short," he must have the intention to cover his sales if coverage is required, or his contract to sell is void. Few such contracts, in comparison with the total number made, come into law, as the selling of goods without expectation of having to deliver is a fairly common practice among all types of speculators. There have been many notorious cases, however, where the seller has lost everything, including his business standing, by being a party to a contract of this type. It is the illegality of the purely wagering contract which makes the operations of the so-called "bucket shops" outside the pale of the law. Contracts where the rate of interest asked is higher than the legal standard for the state in which the contract is made are subject to various legal penalties. In some states, only the excess charged is declared null, while, in others, the entire contract is voided where

the charge is usurious.* Generally speaking, contracts "in restraint of trade" are illegal. However, the phrase has received so many interpretations that no final definition can be given. The object of such restriction is to prevent monopoly, particularly with regard to any article or commodity of general use, but exactly what constitutes restraint of trade must usually be decided individually. At present, it has been fairly well established that a manufacturer can refuse to sell dealers who consistently cut prices, but he cannot control the prices once the goods has been bought and paid for by the dealer.

Contracts embodying unlawful combinations, such as those granting to the makers control of some staple commodity for the purpose of increasing prices to the consumer, are illegal. There is variation in the laws of the various states as to the legality of contracts made on Sunday. Some of the states distinguish between essential and unessential duties. A contract involving the production of electricity, the operation of all things essential to the welfare of the people, and so on, is enforceable. A contract involving the amusement or entertainment of the people, is, on the other hand, not enforceable at law. However, such definite distinctions are rarely made. This type of law is, like hundreds of other so-called "blue" laws, in force but not operative.

Certain *contracts affecting marriage*, such as a marriage broker's contract, have no standing

*Refer to last pages where State provisions are listed

in law. The objection is that they involve unreasonable restraint, and are not, therefore, for the public good. For the same reason, any contract involving a violation of what have become established rules of morality will not stand in law.

A contract involving the defrauding of a third party is void in law.

A contract with a common carrier releasing it from liability in the event of negligence is not enforceable at law, except in the case of certain limited contracts which such common carrier may make with its own employes.

The deliberate falsifying of certain pertinent facts for the purpose of misleading one party to a contract makes it voidable at the option of the person to whom such misrepresentations were made, but does not void it automatically. Probably a great many vicious contracts have been carried out because the loser was unwilling to admit his own gullibility. This natural, but foolish, pride is deliberately traded upon by the less scrupulous, and this constitutes one of the most dangerous phases of contract making. Insistence that all details of a transaction be in writing, and the careful reading of all such writing is an excellent preventative of difficulty, since even a hardened "crook" hesitates to furnish too much proof of his dishonesty.

Contracts made under threats of bodily harm are also voidable at the option of the injured party.

A contract made which involves a breach of another contract is illegal. That is, it is illegal to offer a contracted employe of a rival con-

cern any sum of money for transferring his services, and such employe cannot recover under such an offer. In addition, the concern with whom he held his original contract may, if desired, sue the person making such offer.

Contracts in Writing.—Certain types of contracts have no legal standing unless they are in written form. The sale or lease of real estate must be in writing in order to hold. The mere promise of someone to lease a building, for example, has no legal standing unless a written contract is executed. The man who builds on the unwritten promise of some firm to lease the finished building must take his chance on the firm's carrying out its part.

The sale of personal property may or may not be in writing, depending principally on the amount involved. The state laws vary with regard to this. The following table indicates the values involved in such sales beyond which contracts are invalid unless written:

Ohio—$2,500 or over.
Arizona, Massachusetts, New Jersey, Pennsylvania, Rhode Island—$500 or over.
California, Idaho, Montana, Utah—$200 or over.
Connecticut—$100 or over.
Alaska, Colorado, Georgia, Indiana, Maryland, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, S. Carolina, S. Dakota, Washington, Wisconsin, Wyoming—$50 or over.
Vermont—$40 or over.
New Hampshire—$33 or over.
Arkansas, Maine, Missouri—$30 or over.
Florida, Iowa—Any amount.

With the exception of Louisiana, North Carolina, North Dakota and Pennsylvania, all the

states require that a contract which will not be carried out for more than a year ahead must be in writing to be enforceable.

No one can be held liable for a promise to stand good for the debt of another unless such promise be in writing and signed by himself or by his authorized agent. A distinction is made where the obligation is actually assumed by the third person. In that event, the third person becomes the debtor, and no question of surety enters. For example, A buys certain goods for B on his own account. He is responsible, whether B pays or not, since he assumed the debt directly. Had he merely said he would stand good for B's own purchase, he could not be held.

Assignment of Contract.—Ordinarily, contractual rights may be assigned and transferred provided the other party to the contract is not injured thereby. Such assignment does not, however, relieve the original signer from his obligation. If the person to whom he assigns his interest in such contract does not carry out the terms of the contract, the obligation still rests upon him. He can do so, successfully, only when such substitute is acceptable to and accepted by the other party to the contract.

Wages may be assigned when the assigner has regular employment with a specific person or firm, or has definite agreement for such employment. The contract is binding on the employer when he is advised of such assignment, and he must act in accordance with such agreement.

Death, or financial failure in its legal mean-

ing, transfers contractual rights to money or property. What is due a man under a contract is not voided by his death, but becomes due to the administrator of his estate. When he becomes bankrupt, such moneys are due the trustee to whom has passed the right of adjusting his affairs. When real estate is transferred by sale, certain contractual rights are a part of the sale. This applies to agreed-upon restrictions, and a breaking of such agreements may be answered by an injunction even though the one who breaks them may have had nothing to do with the original contract.

Negotiable contracts.—Certain types of contracts, such as promissory notes or bills of exchange, can be transferred in much the same manner as paper money or checks are exchanged. That is, they are transferable from person to person by indorsement. Naturally, the reliability of the drawer is important, since the value of the note depends upon the ability of such drawer to pay it when due. Indorsement brings with it liability as follows:

—If the note is payable to a third party, he becomes liable to the payee and to all subsequent parties to the contract.

—If payable to the order of the drawer, or to bearer, he is liable to all parties subsequent to the drawer.

—Unless an agreement can be proven to show otherwise, indorsers are liable in the order in which they indorsed.

—Stocks, if properly assigned, and bonds are classed as negotiable contracts, and every bank or other concern dealing in loans holds con-

siderable sums of collateral in this form. The more negotiable they are, the more readily are they accepted by banks. Stock certificates must be accompanied by an assignment, which obviates the necessity of having each change recorded on the books of the company whose stock is represented. A newer form of promissory note, called acceptance, has come into use during the past several years, which is, also, negotiable. This is a written acceptance of goods delivered, thus becoming a definite promise to pay and constituting a note covering the sale of the goods which it represents. The seller is thus enabled to discount these acceptances and receive his payment at once, while the buyer is allowed the usual terms.

General Summary of Contracts.—The business man who has his agreements in written contracts, couched in simple, adequate language, fortifies himself against many difficulties. The written contract has many advantages over the oral one. It is difficult to prove an oral contract in court. The average person has not trained his memory to exactness, and testimony regarding such contracts is quite likely to prove confusing. The death or disappearance of any witness or party to such a contract may invalidate the entire thing. In the matter of wording, the courts usually interpret them as they are written, so it is highly important that the words are chosen to convey the meaning desired. No maze of legal phraseology is necessary, but thorough understanding and careful reading are requisites. It might also be well to note that where a clause is written into a

printed contract, directly contradicting some clause which is printed, the written clause will usually prevail, the assumption being that the latter is a direct statement of intention.

Discharge of Contracts.—Contracts may be dissolved by the following methods: (1) agreement of parties to the contract; (2) performance of agreement indicated by contract; (3) breach of contract; (4) impossibility of performance (rare); (5) discharge in bankruptcy including discharge of contractual obligations.

An *agreement* to discharge a written contract should be in writing, as the original contract was in writing. This is a safeguard to both parties.

Discharge by performance means that the terms of the contract have been complied with and obligation no longer exists. Actual performance is not always existent, as, for example, when a man agrees to purchase goods with the privilege of returning them within a stated time. If he does return such goods, the contract is thereby discharged just as effectively as it would have been had he kept and paid for the goods.

A *breach of contract* permits the other party to the contract to treat it as if it were discharged provided such breach is of sufficient importance to warrant such action. As a rule, a breach of contract must be such as to work actual hardship or damage in order to make it a basis for entire disregard of the contract. That is, if the party to a contract fails to com-

ply with some relatively unimportant provision of a contract, but has expended time and money in performing other provisions, it is not usually held that the other party to the contract is relieved of all obligation or entitled to damages. This question often comes up in the matter of building houses. If the contractor agrees to a time limit for the completion of the house, he is liable for reasonable damages if he fails to live up to such limit, but the party for whom he is building cannot, as a rule, refuse to pay the full amount agreed upon. If the building is for some particular use and the delay has rendered it useless for such purpose, he might avoid payment, but such cases are rare.

In any case of suit for damages, only the net value of the contract can be recovered. If a man contracts for an article which is not delivered, he can, ordinarily, recover only the difference between the contract price and the price he would have paid elsewhere. The profits he might have made on its resale are not usually refunded.

Suit for damages under breach of contract must be brought within a specified limit of time. This is called the Statute of Limitations, and such time varies according to the state in which such suit is brought. The following table shows the limitations set by the various states on different types of contracts:

State	Open Account	Simple Written Contract	Written and Sealed Contract	Judgment
Alabama	3 years	6	10	20
Alaska	6	6	10	20
Arizona	3	4	4	4
Arkansas	3	5	5	10
California	4	4	4	5
Colorado	6	6	6	20
Connecticut	6	6	17	20
Delaware	3	6	20	20
District of Columbia	3	3	12	12
Florida	2	5	20	20
Georgia	4	6	20	7
Idaho	4	5	5	6
Illinois	5	10	10	20
Indiana	6	10	10	20
Iowa	5	10	10	20
Kansas	3	5	5	5
Kentucky	2	15	15	15
Louisiana	3	5	10	10
Maine	6	6	20	20
Maryland	3	3	12	12
Massachusetts	6	6	20	20
Michigan	6	6	10	10
Minnesota	6	6	6	10
Mississippi	3	6	6	7
Missouri	5	10	10	10
Montana	5	8	8	10
Nebraska	4	5	5	5
Nevada	4	6	6	6
New Hampshire	6	6	20	20
New Jersey	6	6	16	20
New Mexico	4	6	6	7
New York	6	6	20	20
North Carolina	3	3	10	10
North Dakota	6	6	10	10
Ohio	6	15	15	21
Oklahoma	3	5	5	5
Oregon	6	6	10	10
Pennsylvania	6	6	20	20
Rhode Island	6	6	20	20
South Carolina	6	6	6	20

State	Open Account	Simple Written Contract	Written and Sealed Contract	Judgment
South Dakota	6	6	20	20
Tennessee	6	6	6	10
Texas	2	4	4	10
Utah	4	6	6	8
Vermont	6	6	8	8
Virginia	2-5	5	10	20
Washington	3	6	6	6
West Virginia	5	10	10	10
Wisconsin	6	6	20	20
Wyoming	8	5	5	5

Breach of contract by *impossibility of performance* covers such cases as prevention by death or serious illness, or the passing of some legal restriction on the action agreed upon.

In the case of *bankruptcy*, a claim should be filed at once. The regular form for such filing is printed and can be purchased at most stationers. Whether or not it will be paid, in part or in full, depends, of course, upon the assets of the person who is declared bankrupt. Certain types of claims have priority, as follows: (1) cost of preserving the estate after the petition has been filed; (2) expense of recovery of concealed assets and the filing fees paid by creditors; (3) costs of administration; (4) wages due employees within certain limitations, viz: that they shall have been earned within three months preceding such petition and within certain specified amounts; (5) any other debts which have priority under the state or national laws.

When such estates are settled by the distribution of assets, and the person is discharged from bankruptcy, he is released from obligation under all such claims.

About the only other consideration of importance in the making of contracts is the competency of the parties to it. Both parties to a contract must have legal capacity to make it in order to make it enforceable. Those who, legally, are not competent to become parties to a contract are, generally speaking, infants, insane persons, and—under certain conditions—corporations, drunken persons, aliens and married women.

The word *infant*, in common law, means any minor or person who has not attained the age of twenty-one years. Such a person can make binding contracts through a properly appointed guardian, and, in a number of states, the age of maturity is changed by state law. Such a minor is liable for actual necessities, but can, if he wishes, repudiate contracts covering things which may not be classed as necessaries. For this reason, the person who sells to a minor on contract must take a chance on having such a contract dishonored.

In dealing with insane persons, a contract made without knowledge or suspicion of such insanity is often held binding upon the insane person. An insane person is, like a minor, liable for actual necessities at their value—asking price having no bearing on the amount of liability.

Practically the same regulations apply to

contracts made by a drunken person. That is, if such person is too drunk to be able to understand the meaning of a contract, he may repudiate it later, with the exception noted above for actual necessities.

With regard to aliens and married women, state laws differ materially. Contracts with an alien enemy are usually suspended when the country of his nativity and the country in which the contracting party lives are at war. In some cases, the laws of a foreign country apply in regard to such contracts. Modern laws have granted wider latitude to married women in the matter of making contracts. Formerly, at common law, a married woman was, in most instances, incapable of making a valid contract. With a few exceptions, such as the binding of herself as a guarantor or selling or mortgaging real estate, the states now allow the same freedom to women as to men in the matter of making contracts.

A corporation is limited by its charter—that is, it cannot make a valid contract except within the limitation of the powers granted in its charter unless such contracts are necessary and suitable for the attainment of the purposes for which it was organized. Such contracts are made through an authorized agent for the corporation.

Agency.—An agency is an agreement between parties, under which one acts for the other in dealing with third parties. The agent is the person to whom such authority is delegated, while the principal is the person who grants

or delegates such authority. The granter of authority is known as the principal or as the employer. The person who is to act for him is known as the agent, the servant or the employee.

Agencies are of two general types—general and special. A *general agent* is one who is authorized to act for his employer in all capacities, or in all capacities of a special sort. Thus, an insurance agent is authorized to act for his employer in all matters pertaining to the insurance of third parties by such employer. A *special agent* is one upon whom authority of a specific nature is placed, and his powers are limited accordingly.

There can be no delegation of an agent's authority without the agreement of the principal. If an employer grants authority to one certain person, no other person may be substituted to act unless the employer knows and agrees to such substitution.

There are various ways in which authority may pass from a principal to an agent. It may be by express grant—oral, written or sealed and written. Oral authority has standing in most states, although it is always safer, in the event of later disagreements, to have such agreements in writing. *Power of attorney* or *letter of attorney* is one form of express grant of authority, and is usually necessary in such matters as the sale of land or the transfer of securities, etc.

Aside from a definite agreement between principal and agent, there are various other

circumstances under which the principal must assume the obligation of a contract. Where a partnership exists, one partner may act for the other in the capacity of agent in all matters pertaining to the business of the partnership. Persons dealing with an employee in a business office may assume that such employee has the powers of an agent, unless the matters involved are of such a type that it appears unlikely that the employee is authorized to act in them. If a relationship of authority exists between principal and agent, it is usually safe to assume that an agency exists and tho principal is liable. A minor child may purchase necessities and delegate the payment for them to his parent, who is then liable. Or a wife may do the same, using her husband's credit, unless he has expressly notified the public that he will not be responsible for such debts. If a principal has shown, by his acts, that he approves the acts of his agent, he may be held liable under such acts. That is, if the agent acts openly and in such manner that the principal should be aware of such action, the principal may be held responsible for such acts, even though they be beyond the scope of the ordinary powers of such agent. This is called *estoppel*, and means that the principal is estopped or prevented from denying liability to third parties. If a principal has approved acts of his agents which have exceeded the terms of the agency, he is then held responsible for all such acts. That is, if the agent has exceeded his authority and the principal has accepted a profit accruing un-

der such act, he is then assumed to have granted the authority to so act.

Obligations of All Parties to an Agency.—The obligation of an agent to his principal includes the following of all instructions pertaining to the matters in which he acts as agent, with the exception of acts which are illegal or immoral or which will result in damage to his principal. He is also obligated to refrain from acting for himself personally in matters involving his principal, and he is obligated to honesty and reasonable intelligence in the performance of his duties to his principal. Gross negligence, resulting in loss or damage to his principal, makes him liable for breach of contract and damages to such principal.

Within the scope of his authority as delegated to him by his principal, the agent's acts are construed to be his principal's and not his own. This is true where the agent is acting as such, and that fact is known to third parties to the contract. If he conceals the fact that he is acting for a principal, he assumes a liability of his own, and the third parties may proceed against either him or his principal. If the agent exceeds his authority as expressly granted, the principal is not usually bound by such acts unless he approves them, or had ample opportunity to be aware of them and has not notified the third parties that he refuses responsibility.

The obligations of the principal to his agent include the payment of the remuneration agreed upon, or the payment of a reasonable amount

in case the contract is not carried out in full by the agent. Only gross negligence on the part of the agent releases the principal from his agreements regarding compensation. Under obligation of principal also comes the provisions of the Workmen's Compensation Law, by which he is obliged to take the responsibility for his employee's safety while such employee is engaged in work for him. The amount of liability in case of accident is usually fixed by this law as it exists in the different states.

To third parties, the principal is liable for all authorized acts of his agent. He may also be liable for acts committed with his knowledge or with his ratification, even though these may not be within the powers granted such agent.

When a contract is not under seal and signed by the agent personally, he may sue or be sued under it.

Termination of Agency.—Practically the same conditions apply to the termination of an agency as to the termination of any other contract. That is, it may be ended by agreement between principal and agent, by the performance of the work agreed upon, by breach of agreement or by revoke by the principal, by the impossibility of performance (death or insanity of one of the parties) or by bankruptcy.

Partnership.—Following is the New York legal definition of a partnership:

Partnership is the association, not incorporated, of two or more persons who have agreed to combine their labor, property and skill, or some of

them, for the purpose of engaging in lawful trade or business and sharing the profits and losses, as such, between them.

A partnership must be formed by contract, according to the rule for the formation of contracts previously noted. The contract, in most states, must be in writing if the partnership is to extend over one year. The determining of whether or not a partnership exists is sometimes difficult, since not all combinations of effort or money constitute a partnership. Usually, an agreement to share property, labor and skill and the net profits of an enterprise are the basis for determining whether or not an actual partnership exists, but there are exceptions to this. If money is loaned to a partnership, and a share of the profits taken as return on such loan, the person who makes such loan does not become a partner unless he actually controls the partnership. Farming land on shares does not usually constitute a partnership, unless the land is owned jointly also. Right of equal control is really the determining factor, and where no written agreement exists, this must be proved.

The rights of one partner are only in proportion to the entire holdings, after all firm debts are discharged. A purchaser or heir may only demand an accounting and the payment of the amount representing the share which he has purchased or inherited. The other parties do not have to accept him as an active partner unless they so desire and agree. Majority rules unless there is a written agreement otherwise —that is, majority as to numbers rather than

interest. Three out of five may decide an issue, regardless of the amount of their individual interest, unless there is an agreement to the contrary.

An authorized partner is an authorized agent for the partnership, but he may not act so as to destroy the usefulness of the partnership or to the detriment of the others. He cannot make it impossible for the business to continue, nor can he convey by deed property which belongs jointly to all the partners. The partnership, however, is liable for all acts which come within the scope of the partnership.

Perhaps the most dangerous feature of partnerships is the individual liability of partners. Each partner is liable for partnership debts to the extent of his private fortune as well as the amount of interest he may have in the partnership. That is, if the assets of the partnership are insufficient to meet the demands of its creditors, the partners become liable personally. There are some slight modifications of this rule in a few states, but it is a point which is of much moment to any man entering upon a partnership. He thereby places his private fortune at the mercy of the honesty, ability and success of his associates, and much hardship may be worked by the careless association of partners.

A partnership is terminated by the same processes as any other contract—agreement, breach, performance, impossibility and bankruptcy. In the first instance—agreement—it is necessary to advise all creditors of the firm

either by letter or publication or both, since failure to do this renders a retiring partner liable to debt contracted after his withdrawal if the person who extends such credit had no means of knowing that such partner had withdrawn. In the case of bankruptcy, an assignment for the benefit of creditors without provision for the continuance of the business must be made before the partnership is dissolved legally.

Limited Partnerships and Joint Stock Companies.—Because of the burden which falls upon a partner by reason of his personal liability for debt under an ordinary partnership, there have been devised what are known as limited partnerships and joint stock companies. These must be formed under the laws of the state in which they are organized, and failure to comply with such laws renders it an ordinary partnership with the unlimited liability of each individual as noted.

Under a limited partnership, liability is limited to the amount invested in capital, and a certificate must be filed setting forth the amount of such investment, together with such other data as may be required by statute. A joint stock company is much the same as a corporation except that it arises from a written agreement between the members rather than from a charter granted by the state in which it is organized. These concerns are authorized only in Michigan, New Jersey, Ohio, Pennsylvania and Virginia.

CORPORATIONS

In dealing with corporations, it is necessary to speak briefly concerning their formation, since the various state laws are fairly definite as to the methods and scope of such corporations as may come under their laws. The preliminaries are usually handled by someone of the legal profession who is, or can be, familiar with the statute regarding the corporation. Its powers are limited by its charter, and almost the only exception to this is concerning such acts as are essential to its life as a business enterprise. Beyond its charter, it is powerless to act, and contracts made beyond its specified powers are often ineffective. This is especially true of municipal corporations, and the other party to a contract should secure himself by making certain that the powers of the corporations are not being exceeded. Such corporations are not bound by any contract to which they are not a party, and contracts made with the promoters of a corporation may be void because the corporation is not yet formed and the promoters cannot be, therefore, agents for such legal bodies.

The matter of declaring dividends is largely in the hands of those in actual control of a corporation. That is, until a dividend is declared, the stockholder cannot, ordinarily, force the company to declare it even if the profits are such as to warrant it. If such dividend

has been declared but not paid, the stockholder has grounds for suit.

Preferred stock carries a right of priority over common stock. Sometimes this is merely a right to precedence in the matter of distributed earnings and sometimes it includes a priority claim on the assets of the corporation in the event of dissolution. If the stock is cumulative, the stockholder has title to dividends for the years in which dividends are not declared, prior to any such claims by the holders of common stock.

The corporation is distinguished by the limitations of liability assumed by its members or stock holders. A subscription for any specified number of shares of stock usually carries with it liability only for the par value of such stock. In certain classes of corporations, this is changed by law. Stockholders in national banks, for example, are liable for twice the face of their subscriptions at par for the stock. This is a United States law. In California and Minnesota, with a few exceptions, stockholders are liable for twice the par value, and in New York certain types of corporations carry liability for the full amount of the corporation's debts. In a few other states, this liability for debts must be avoided by a clause in the charter. In a number of states, the stockholders of a corporation are liable for the wages due employees, with a specification as to the time within which demand must be made for payment.

In almost all the states corporations are re-

quired to file annual reports with some specified state official, setting forth the names of officers and directors, the amount of capital stock authorized and paid in, bonded and other indebtedness, names of stockholders with amount of stock held by each, location of principal office and the value of personal and real property held by the corporation. Corporations may be terminated by the same general means as contracts and agencies.

PROPERTY

Property is of two general kinds—personal and real. *Personal property* consists of goods and chattels, and *real property* consists of real estate. Personal property is usually movable, and there are laws covering its transportation. There are two types of carriers, or persons to whom the transportation of personal property is entrusted—private and common or public. Since much of the business of producers and merchants of all sorts has to do with carriers, the laws which control them are of general interest.

A private carrier is one who carries goods only of a certain sort, under certain conditions or to certain places. He does not conduct a general business as a carrier, and his agreement to carry property is a matter of contract between himself and the person for whom he performs the service. He is then bound only by the terms of such contract.

A common carrier is one who makes a busi-

ness of transporting either goods or passengers, for a specified charge and to certain places. That is, he is in the general business of transportation and cannot discriminate as to whose goods or what persons he shall carry, with certain exceptions. There are very definite laws governing common carriers, and their liability is greatly in excess of a private carrier. Railroads, steamships, cabmen, porters, truckmen and motor buses are all common examples of common carriers if they are in the general business of transportation. Under such conditions, the common carrier assumes almost entire liability within the scope of his powers —excluding outside forces over which he can exercise no control whatever, such as tornadoes, lightning, etc. In most cases, insurance covers these contingencies.

Where a private carrier is concerned, his liability is due almost entirely to fault or negligence on his part. A common carrier may be liable without fault or negligence on his own part. He becomes liable as a common carrier when he accepts goods for transportation, unless he holds them by order of the person sending them. In that case, he is acting as a storage or warehouse, and his liability is limited accordingly. He cannot refuse to accept goods for transportation without good cause—such as the dangerous qualities of the goods to be shipped, or poor wrapping which would increase his liability unreasonably. He may refuse to accept them without payment in advance if he sees fit, or he may refuse because he has no room to take them for transport. The latter reason

is not always legitimate, as it is assumed, with most common carriers, that they must provide means to carry an average expectation in goods. It is necessary for him to provide proper places and people to receive goods for shipment and to make delivery at the place specified to some proper person. If payment is not made in advance, he has a lien on the goods for his own compensation for carrying charges. The common carrier is usually responsible for acts of his agents, unless such agent is acting individually, receiving the compensation for carrying and retaining it. In that case, he is not an agent but himself a carrier.

A common carrier may limit his liability by agreement with the person for whom he is carrying. This is the usual procedure. The common carriers have certain requirements which must be fulfilled by all persons using such common carriers for the transport of goods, provided notice of these requirements is given and received and agreed to either definitely or by silence. Such arrangement limits his liability, but does not discharge him from liability when he is negligent or at fault.

In making deliveries to consignees of goods, some states (Alabama, California, Michigan, Minnesota, Mississippi, New York, Ohio, Tennessee, Texas) require that notice be given such consignees that goods have arrived. In others, no notice is required, but the common carrier holding such goods for delivery is usually responsible for warehousing. Express companies however, usually include in their agreement delivery to the person.

SALES OR MORTGAGES OF PERSONAL PROPERTY

In the sale of any property, the exact time of title passing is sometimes of considerable importance. In personal property, time of delivery usually marks the passing of title. When goods are shipped, the transfer of such goods to the hands of the carrier passes the title out of the hands of the seller to those of the buyer. That is, the buyer becomes responsible for such goods, subject to the liability of the carrier as noted previously. Exceptions are noted when special provision is made that the purchase shall not be complete until goods are delivered. When a contract of sale is made on the basis of delayed payment, title does not pass, by agreement, until such payments are completed. In purchases on the installment plan, for example, the contracts executed at the time of sale provide that title to such goods remain in the name of the seller until payments are complete, even though delivery of the goods is made at the time the contract is signed.

Where two or more buyers are concerned, the buyer who actually gets the goods in his possession is ordinarily held to have a clear title to them. If one person agrees to purchase, but does not take the goods, and, later, another sale of the same goods is effected to a third party, the third party has clear title to them if he takes or receives them.

When a sale is effected by fraud—such as

false representation as to ability or willingness to pay—the seller may sue to have the sale declared null on the ground that the contract was fraudulent. If he accepts a note, however, or sues for payment, or proves a claim in the event of bankruptcy, he cannot then have the sale rescinded but must take his chance on collecting the amount due for the goods. He may, if he desires, refuse to deliver goods until payment is made, and he has a lien on such goods, while they are in his possession, to cover the amount due him. Or, if he sells a quantity of goods, delivering only part of them, he has a lien on the goods remaining in his possession. If a buyer becomes insolvent while goods are in transit, the seller has a right to stop delivery even though he has, legally, passed title to the buyer when he delivered the items to the carrier. This applies only to goods which have not been paid for, and does not include any for which payment has been made.

Definite misrepresentation by the seller will enable the buyer to break a contract of sale. If the seller has made statements concerning the goods which have influenced the buyer to contract for them, and these statements are found, later, to be false, the courts usually hold that no contract exists. Silence about defects, or general statements, do not often constitute fraud. The seller who makes such definite statements concerning the product he is selling is considered to have warranted them to be as he represents them, and the products must bear out his statements. However, if the opportunity for inspection is pres-

ent, and the buyer fails to take advantage of it, the seller can usually enforce the contract of sale. Where inspection is not possible, as is the case with goods sold by the mail order houses, the seller is obligated to furnish goods equal to his representation of them, or the buyer may, if he wishes, sue to break the contract of sale. The success of the large houses of this kind is based on their endeavor to supply goods strictly in accordance with their representations, and, under ordinary conditions, to accept the decision of the buyer, just or unjust, in the matter of returning such goods because of dissatisfaction.

A *chattel mortgage* is a conditional sale of personal property to secure funds, or to make payment of a debt. If the person making such a mortgage agreement fails to repay the money loaned, or to live up to the terms of the contract, the goods pass with clear title to the mortgagee. All of the states have passed laws governing the procedure in chattel mortgages, and these are not uniform. Most of them require that such an arrangement must be in writing, but the other rules differ. The mortgager usually retains possession of the property in question until he has failed in his agreement. At that time, the mortgagee may take immediate possession of it, and, if he does not, he is liable to loss if there are other creditors who take action against the property in the meantime. The mortgager has the right of redemption, by payment in full with charges, for a period specified by law.

REAL ESTATE

There are two ways of disposing of real property, generally speaking—by lease and by sale. When a *lease* is given, the person taking the lease acquires the use of the property and possession of it for a specified time and under specified conditions, but he does not acquire title to it. When property is *sold*, title passes from the seller to the buyer.

Leases of Property.—Leases may be oral, implied or written. A lease in writing is the standard and recognized form, but, under some conditions, the implied or oral lease stands. A land owner may sue anyone who has occupied his land or buildings for a length of time and usually get a judgment for rent in reasonable proportion. The continued occupancy of the tenant is taken to indicate that some remuneration to the owner is due, unless he can prove an arrangement to the contrary. A number of the states provide that leases shall be in writing only if they are for a period longer than one year, so it is possible to prove an unwritten lease if it is for a short period. Such proof is always difficult, however, and it is always advisable to have such contracts written and properly signed.

Most states require that leases for periods of one or more years be recorded. California, Connecticut, Florida, Idaho, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota and Vermont require the regis-

tration of leases for more than one year. In Rhode Island the time is more than two years, while those for more than three years must be recorded in Indiana, New York, North Carolina, Ohio, Tennessee, Wisconsin, and Wyoming. Kentucky, Virginia and West Virginia set the time as five years; Maine, Maryland, Massachusetts, and New Hampshire more than seven years and Delaware and Pennsylvania more than twenty-one years.

Tenants signing a lease should see that there is some provision for their release from rent liability if the buildings are destroyed, since, otherwise, they remain liable for the rent even though the buildings are either gone or uninhabitable. If the building alone is leased—without any interest in the land—total destruction releases the tenant, but partial destruction does not.

Rights of the Landlord.—Most states grant the right to landlords of dispossessing tenants upon failure to pay rent, and some permit the landlord to enter the property and dispose of goods and chattels therein to cover his indebtedness. This rule, however, has been defeated many times, and most states now have decisions tending to nullify such privilege. In some, it does not exist at all.

Most leases now carry a provision that if neither party to the lease gives notice to terminate it, the lease remains in force for a specified time. Where such a clause is not present, the landlord may either consider that the tenant has agreed to a lease or that he is a trespasser, and a tenant becomes, legally, a

trespasser, if he has received notice of termination of lease from the landlord and has not moved. Unless otherwise specified, the same rules apply to a sub-tenant as to a tenant.

Rights of the Tenant.—These are subject to constant revision, especially in those states where the large cities are located. Consequently, while general rules are given, they may be modified under local conditions.

As a rule, the tenant is entitled to ordinary peace in his occupancy. That is, the landlord cannot forcibly remove him from such premises except by reason of definite violation of the tenant's agreement with the landlord. Nor can the landlord render the premises uncomfortable purposely.

Most leases contain clauses relating to repairs. If, however, the landlord does not expressly agree to keep up the repairs, the tenant must do so himself, and cannot deduct such charges from the rent due. This applies only to ordinary repairs, since it is the landlord's duty to keep the premises habitable and to prevent anything which would work harm to the tenant. A tenant binding himself to repair should make clear what he means, since such a clause, unmodified, would make him liable for the entire rebuilding of the premises should they be destroyed by fire or other casualty.

Such fixtures as the tenant attaches, he may remove while he is in possession of the property through lease, but he usually agrees to leave the property unmolested and unharmed in so doing.

Sale of Real Estate.—There are two principal documents of sale—the agreement to buy and the conveyance of property, or transfer of title. This is usually the transfer of the deed.

Contracts of sale for real property must, in most cases, be in writing, and if there is any danger of the seller disregarding such an agreement, it is well to have the contract recorded. Since a clear title is necessary, the prospective buyer should assure himself that the seller possesses such title. This process of search is handled by persons familiar with it, such as lawyers or title companies, who go through all the public records and prepare an abstract of title showing all transactions which have affected such property. Additional security is obtained by having the title insured by some company specializing in that sort of thing.

Certain formalities are required when the contract of sale is completed, varying according to state laws and comprising signatures, seals, attests, acknowledgment, stamps, etc. A seal is generally necessary, although there is a tendency away from this indicated by various state modifications of this requirement. The delivery of a properly signed and attested deed operates to transfer title to the person buying the property. If such deed is delivered to a third party, to be held by him until some condition imposed upon the buyer is fulfilled, it is said to be *delivered in escrow*. Title passes when the condition is removed and the deed is delivered to the buyer.

All deeds should be recorded in the public office provided for such records, as this serves

to give notice to the public generally that title has passed. If no record is made, the buyer may lose his title to a subsequent buyer because such third person had no means of knowing that a previous sale had been made. Deeds by corporations must be signed by a duly authorized officer of the corporation and the seal attached.

Types of Deeds.—There are two types of deeds—the quit-claim deed and the warranty deed. In the quit-claim deed, the seller does not claim a clear title, but merely assigns whatever rights he may have in the property. In the case of an estate, where there are a number of heirs, quit-claim deeds are often obtained from each in order to effect a sale of some property owned by the estate. The quit-claim deed does not warrant the title, and if defects develop, the buyer does not often have any ground for action against the person giving such a deed.

The *warranty deed* is more complete, and under it the seller may warrant one or more or all of the following points: (1) title of seller to property sold; (2) against rights of third person, such as mortgage holders; (3) against all claimants, or against particular claimants; (4) performance of all acts to assure title to buyer.

When property is sold subject to a mortgage, the buyer gets only an equity in the property, equal to the difference between its value and the amount of the mortgage.

INSURANCE

Insurance is of two principal types—property insurance and life insurance. By *insurance* is meant the reimbursement of insured or his heirs for loss of property or life. While it is not legally essential, the only reliable sources of such insurance are the companies specializing in insurance. The principal type of property insurance is against loss or destruction by fire. Under this, by payment of a stipulated amount, or premium, the insuring company agrees to pay a certain sum if house or contents or other property be destroyed by fire.

The contract of insurance must have all the essential elements of any contract. Usually it is in the form of a printed contract, issued by the insurance company, for which the insured gives the payment stipulated and a signed application. In order to have such a contract effective, it is necessary that the insured have a legal interest in the property insured. If, for example, his property is in the name of his wife in any state where the laws give her absolute control of her own property, he does not have an insurable interest in it, and insurance so taken will be void. He does not have to own such property absolutely—a life interest in it will give him an insurable interest, or the holding of a mortgage on it. This insurable interest must exist at time of loss in order to enforce the liability of the insuring company.

In the formation of the contract, it is ex-

pected that the insured will make truthful and comprehensive statements. That is, he may void his policy either by stating things which are untrue, or he may void it by omitting to make statements which have important bearing upon the contract. Misrepresentation of any sort, deliberate or unintentional, is quite likely to be upheld as voiding the policy.

The principal matters which affect the validity of the policy after it is issued are such changes as might affect the risk. Any change in title automatically cancels the policy unless the insuring company agrees to such change. A transfer of ownership, therefore, must be reported and transfer of the policy of insurance allowed, which constitutes the making of an entire new contract actually. Insurance risks are usually rated according to the fire risk, and anything which increases such risk, if not allowed by the company, may void the policy. Thus occupancy by any type of business carrying a greater fire risk may void the policy in case of loss, unless the company has consented to such increased risk. Changes in the building itself, the addition of a garage, or anything which increases the danger of fire, should be reported and the agreement of the company secured in order to protect the insured.

Since it would be against all standards of good business to permit people to insure the same property in several different companies, thus securing protection in excess of value, companies pay only their proportionate amount of the insurable value where this is done. Some policies make it a part of the contract that no

other insurance shall be taken, or, if other insurance exists, complete details shall be given. The taking out of additional insurance in these cases releases the company from obligation to pay anything. In this way, all companies are protected against liability for exorbitant amounts in the event of loss.

Most policies carry a provision whereby the policy is void in the event that the property is left vacant. When the insured is anticipating absence greater than that allowed by his policy, therefore, he should notify the company and get the coverage provided for such absence. Usually it is possible to have a separate short contract, or rider, attached to his policy agreeing to such absence. Policies are quite specific as to the risks against which they insure, and custom has established such losses as standard. The complete amount of the loss is rarely paid —most insurance companies specifying that they pay only from fifty to eighty percent of the total value. Fire of almost any origin except that specifically noted in the policy constitutes ground for claim, unless occasioned by gross negligence or by fraud.

A policy of insurance against fire cannot be transferred before loss has occurred without the consent of the insuring company. Thus, a fire policy cannot be transferred when the deed to the property is transferred unless the company has been advised of such transfer and has consented in writing. After the loss has occurred, the company cannot influence such transfer, as its liability is established.

Most policies have definite provisions con-

cerning notice of loss and proof of loss. Usually it is required that the insured give "immediate" notice of such loss, and provide such proof as is required by the terms of the policy. The company may, however, waive notice and proof, and if this is done there is no obligation on the part of the insured to supply them.

Every policy should be read carefully, and understandingly. If certain clauses are written which contradict the meaning of printed clauses, it is well to remember that the written clauses usually prevail, since writing is a more direct statement of intention than standard, printed clauses.

Life Insurance.—In the case of life insurance, the insurer agrees to pay a specific sum either to the insured at a stated time, or to his estate when he dies. The former is generally called *endowment life insurance*, and the latter is *life insurance*. In taking out life insurance, the factor of insurable interest must be present when the policy is issued, instead of, as with fire insurance, when it becomes a claim. Insurable interest is an interest which will tend to preserve the life of the individual rather than to end it. That is, if the insurance is taken out by the beneficiary, it must be established that he is more interested in keeping the insured alive than in having him die. The reason for this is obvious, since any other plan would encourage murder. A man has unlimited insurable interest in his own life. He can take out as much insurance on his own life as he can pay the premiums for, but only those who have legitimate interests to protect may

do this for him. A creditor may have an insurable interest in his debtor's life to the amount of the indebtedness; a business may have an insurable interest in any one of its executives; a wife or child has insurable interest in husband or father; husband in wife and so on. Ordinarily, relationship alone does not represent insurable interest, but there must be the element of pecuniary benefit from the insured. In the case of a debtor, he cannot hold any large amount in excess of his claims without liability to suit from the estate. It is held that he is entitled only to coverage for his debt with interest and other costs, the balance belonging to the estate.

Policy contracts of this type, like those for insurance against fire, are standard in form. Since the truthful statements of the insured are the basis of their issuance, misrepresentation may void the contract. The policies themselves may contain exceptions to this where the facts are not material, or the insurance may be held effective if the answer is open to more than one construction and the company issues the policy without having such answer made clear. Default in the payment of premiums will void the policy subject to such interest as the insured may have by reason of accumulated values from previous premium payments.

If the insurer reserves the right to change his beneficiary, he may do so with the agreement of the insuring company. Otherwise, the consent of the beneficiary is necessary to make such change effective. The rights of the bene-

ficiary depend upon the terms of the policy itself.

Some policies carry a clause releasing the insuring company in the event of certain contingencies—suicide, military service in time of war, etc. Execution for crime voids life insurance policies in most instances, whether they carry such a provision or not.

Notice and proof of death are required when claim is made against such a life policy.

MORTGAGES

A mortgage is a conveyance of property to secure a debt or other obligation. It carries with it the obligation on the part of the mortgager (one who gives the mortgage) to pay such interest as is demanded, taxes and other assessments, and to make such payments on the loan itself as are required by the terms of the mortgage. Failure to do so gives the mortgagee (person taking the mortgage) the right of foreclosure. By *foreclosure* is meant the direct application of such property to payment of the debt. Usually this means that the property is sold, and the price obtained used to pay the debt, interest and costs. Whatever remains belongs to the mortgager.

Mortgages should be recorded, being handled in much the same way as deeds. The discharge of a mortgage by payment should also be recorded.

At one time, a considerable proportion of the mortgage loan business was in the hands of

individuals, but the present trend is toward its handling by banks or title and mortgage companies. Since there are a great many very large building operations, and many loans in correspondingly large amounts, such loans have been made for longer periods and have been split up into smaller amounts by the issuance of bonds, secured by these mortgages, and re-sold to smaller investors. Since the mortgage loan, under most conditions, is one of the safest of investments, these mortgage bonds have found wide sale. In most large mortgages there is a provision that the principal shall be reduced at stated times and in stated amounts during the life of the loan. This provides for any depreciation of the property and also helps guarantee the discharge of the debt at maturity by reducing such obligation gradually.

GUARANTY

By *guaranty* is meant the agreement to stand good for the default of another. There are two types, one by which the guarantor undertakes to pay if the debtor does not and the other by which the guarantor undertakes to pay if the debtor cannot. The former is called surety and the latter guaranty. Under the former, the guarantor becomes liable as soon as the debtor has failed to discharge his debt at maturity. Under the latter, the person to whom the debt is owing must proceed against the debtor first, in an endeavor to collect the

money. He can look to the guarantor when the debtor is found unable to pay. However, it is possible, in many states, for the surety to demand that action be taken against a debtor with the alternative that, unless such action is taken, he will withdraw as surety. If no action is taken, and, later, the debtor defaults or becomes insolvent the surety cannot be held. Notice of default is not usually necessary in the case of a surety. In the case of a guaranty, notice should, in most cases, be given.

Where two or more persons sign as surety or guarantors, every surety is liable for the whole debt. He may take such steps as seem advisable to collect from the other sureties their shares, but he is obligated to pay first unless a specific agreement otherwise is made.

After a surety has paid such an obligation, he is entitled to collect it from the debtor if he can. He acquires the rights of the original person to whom the money was owing. This is called the *right of subrogation*.

A surety may be released by (1) agreement between debtor and creditor that his liability no longer exists (this agreement must be for a consideration and under seal); (2) by payment of the debt; (3) any material change in the contract between debtor and creditor made without the knowledge and assent of the surety; (4) his own discharge in bankruptcy (not that of the debtor or co-sureties).

ESTATES

By *estates* in this case is meant the property of deceased persons. It is necessary that authority to handle such property be vested in one or more specific persons. If this is done by will, such person is called the *executor*. If no will is left, such person is appointed by the court and is called the *administrator*. If an executor is appointed, he must, in most cases, prove his authority by signifying his acceptance of the appointment and taking oath as to the performance of his duties. He then receives "letters testamentary" from whatever public official has charge of such matters, and these are a certificate of his authority.

Upon the persons appointed to take charge of the estate rest the obligations of proving the will, which is done by offering it for probate in the probate court. If an executor does not wish to serve, or does not qualify, the probate court appoints an administrator. If the executor fails to prove the will, any person with a valid interest in it may offer it for probate.

The first step is to file a petition for probate. In this petition are stated the place and time of death, the deceased's last address, estimated value of the property, names and residences of surviving immediate relatives and the belief that the will in case is the last one made by the deceased. In some states notice must be given to all interested parties, and, if no objection arises, the will is admitted to probate.

Where no will is made or found, husband or wife is first entitled to receive letters of administration for the estate. If husband or wife does not survive then the next of kin under the statute of whatever state is concerned may be appointed. However, such person must be legally qualified—minors, drunkards, insane or weak-minded and insolvent persons being unallowable. The administrator appointed by the court must act without the guidance of the deceased where there is no will, and according to the terms of the will when he is appointed in place of an executor unwilling or unable to serve. There are various differences between administrators in legal phraseology, as follows: *administrator cum testaments annexo* (appointed in place of an executor); *administrator de bones no* (appointed to succeed a previous administrator); *administrator pendents lite* (appointed to take charge during a dispute between interested parties); *executor de son tort* (one who takes upon himself the management without authority).

Whether an executor or an administrator has charge of an estate, it is customary for him to file bonds covering proper administration of the state. In the case of executors, this formality is sometimes dispensed with by express instructions in the will.

Either executor or administrator may be removed because of breach of duty or misconduct, and application for removal may be filed by any heir.

In the main, the duties of executors and administrators are: (1) burial of the dead; (2)

giving public notice of his appointment; (3) filing inventory and appraisal of the estate; (4) collecting debts owing the estate; (5) paying debts owed by the deceased and costs of administering the estate; (6) paying taxes due; (7) filing account and settling same; (8) distributing estate among the heirs. When the distribution is complete, he is discharged from further duties by the court.

The state laws vary considerably regarding the distribution of an estate among the heirs. In general the succession is as follows: (1) widow or widower, (2) children, (3) parents, (4) brothers and sisters, (5) remoter relatives.

At present, a widow is usually entitled to all or part of the personal property and part of the real property, if there are children; half of both real and personal property if there are no children, and all the property if there are no other relatives.

A widower gets either a life interest or the property absolutely according to the laws of the state. Formerly he got all the personal property and a life interest in all the real estate, but this has been modified to include either a part or the whole of the property.

Subject to the rights of surviving widow or widower, children share equally in both real and personal property and have it absolutely when no will is left. The issue of a deceased child share as would the child. If only grandchildren are left, they share equally. Other relatives share according to the laws of the state If no heirs are left, the state inherits the property.

In the making of a will it is best to have some qualified person, as an attorney of good repute, write it. Phraseology plays an important part in establishing a will, and there are many legal intricacies to be guarded against. Any person of mature age and sound mind may make a will, but he cannot often word it so that it will stand in court. It must be signed by the testator, or person making the will, and, in most cases, signed by two or more creditable witnesses. If the will is not signed in the presence of such witnesses, the testator must acknowledge the signature to them. The witnesses should be entirely disinterested, as otherwise, they may be disqualified as heirs even if the will is not rendered invalid thereby.

If a later will is made, it should specifically state that all former wills are revoked thereby. Codicils, or changes, may be appended to a will whereby certain provisions of the will are revoked. The law gives immediate heirs certain rights which cannot be willed away from them without definite reason. Therefore a wife or a child may not be left out of a will unless the testator takes note of such heir and states the reason for excluding him or her, or an agreement under a previous settlement, by which such share has been allotted, is existant.

BANKRUPTCY LAWS

Under these laws, any person—with the exceptions noted—may voluntarily take advantage of this law to declare himself bankrupt.

The exceptions are municipal, railroad, insurance and banking corporations.

Also under this law, almost any person or concern may be declared an involuntary bankrupt. Debts must amount to one thousand dollars or more, and when the special corporations noted above are declared bankrupt, the law is not operative concerning their release from liability.

If a voluntary petition in bankruptcy is filed, it must be accompanied by a complete schedule of all property, personal or real, owned by the petitioner and a statement of all debts owed, with as complete details as possible. Such petitioner must submit to such examination as may be desired by his creditors or trustee, but no evidence he may give shall be offered against him in criminal proceedings.

The following are the debts which may be proved against the estate of a bankrupt (discharge from bankruptcy cancels the bankrupt's further obligation under these, whether paid or not): (1) the amount of a judgment or any note, mortgage or other instruments in writing which was owing (whether due or not) at the time the petition was filed; (2) amounts due on open account or upon contract.

The only debts not included in such a release are taxes due the state, county, township, city or United States; liability for property obtained by false representations or pretenses; liability for wilful or malicious injury to any person or property of another; alimony or money due for the support of a wife or child; for seduction or breach of promise and seduc-

tion; money due employees and earned within three months before the date of filing; money due an employee but retained by the employer to secure faithful performance of a contract; debts created by fraud, embezzlement, misappropriation or defalcation while an officer in any fiduciary capacity; or debts which have not been proved because the debtor had no knowledge of such petition in bankruptcy being filed.

Thus, while the discharged bankrupt may be released from liability under all ordinary debts, he remains responsible for those carrying with them a moral as well as a financial obligation.

GENERAL PATENT LAWS

Patents may be issued to any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by any others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned upon the payment of the fees required and after the usual formalities have been completed. Patents may be applied for by and issued to the legal representatives of a deceased inventor.

Where there are two or more inventors jointly, a joint patent is issued.

To be patented, the invention must be in

some sort of practical form, and in most cases actual use is essential.

Patents are issued for a term of seventeen years, and, when issued, become personal property to be willed or assigned or sold in accordance with the laws governing all other personal property.

It is always advisable to have an attorney secure a patent, since the form, wording, etc., of the description are highly important in protecting the patent holder.

If the application is not complete for examination within two years from the date of filing the petition, it is regarded as abandoned unless satisfactory proof is furnished that such delay was unavoidable. When the nature of the case permits, drawings of the invention are required. These must be signed, as must the petition, by the inventor or his attorney in fact and witnessed. The patent office requires that drawings must be made in India ink on three-sheet Bristol board or plain white paper of corresponding type. The size must be 10x15 inches, with a clear margin of one inch. All work must be within the margin, and the signature of the inventor goes in the right hand lower corner, inside the margin, with the witnesses' signature in a corresponding place in the lower left hand corner. In some cases models or samples are required. All papers should, if possible, be filed at the same time.

After all the forms are complete and filed and the fee paid, the petition is complete and ready for consideration.

Applicants are notified of rejections, and the

reasons for such rejections are given. The original specifications may be amended before or after the first rejection, and such amendments may be offered as often as reasons for rejection may be given, provided such amendments correct the objections and this is clearly explained. After appeal to the examiner-in-chief, no further amendments or specifications are allowed. The filing of amendments must follow, generally, the same plan as the filing of the original application and plans.

After an application for a patent has been rejected twice, it may be appealed to the examiner-in-chief, upon the payment of an additional fee.

The owner of a patent, whether original owner or assignee, may license others to use his device, either with or without royalty payments to him for such use. The Patent Office is headed by the Commissioner of Patents, who should be so addressed.

Trade-Marks.—Any design or mark which has become definitely associated with some particular brand of goods may be allowed as a *trade-mark*. Words of common descriptive use, or the names of places, may not be used, since this would prohibit other concerns from using them and interfere with business. Nor can the flag or coat-of-arms of the United States be used in this way, nor the emblem of any fraternal society. Trade-marks are registered in the bureau which is a department of the Patent Office. Trade-marks which are duplicates of or too similar to those already in use are not allowed. Full details as to the length

of time such mark has been used, the class of goods it is used with, the firm's name and address, a drawing of the trade-mark and facsimiles of the trade-mark as actually used on the goods must be submitted, and a fee paid. When a trade-mark is sold, as a part of the good-will, such sale must be recorded within three months.

COPYRIGHTS

Copyright is the protection granted authors, composers, artists, photographers, publishers, etc., for their work. It grants them the right to such products of their own, and thus prevents their use for profit by anyone without sharing such profit with the originator of the work. Thus, royalties must be paid if the stories or musical compositions or other matter be reproduced for purposes of resale or profit. Copyrights are issued for twenty-eight years, and may be sold, assigned or willed, as with other personal property.

COLLECTION OF DEBTS

At one time, practically all the states permitted arrest and imprisonment for debt, but these laws have been done away with so far as actual practice is concerned, even if not by statute. At present, imprisonment is limited to such cases as are marked by fraud, such as misrepresentation in the contracting of the debt, or absconding. Sometimes it is possible

to arrest the debtor who possesses assets which he refuses to apply to the payment of the debt.

The process of *garnishment* is the one most generally practiced. By this, the creditor may bring suit against any third party holding assets of the debtor, as trustee, and secure an attachment of such assets. Thus, if there is anything due the debtor, as salary, commissions, etc., the creditor can get a judgment against it. If such trustee has given a negotiable note, he is not usually made to pay, as there is danger of his having to pay such a note twice.

Except for taxes and wages for labor, there is an allowance for homestead in most of the states, and all the states have some sort of exemption laws. This usually provides certain personal necessities, and certain sums of money.

MECHANICS LIENS.—These are claims on property for coverage of charges for labor or material in their construction. Under these laws, the builder or supplier of material has a claim against the property for enough to cover his wages or the price of material used during a specified time, and he may bring suit during such time and force the sale of the property to get his money in case the owner will not redeem it by paying the debt. Six months is the usual time allowed for the filing of such liens.

PENALTY FOR EXCEEDING LEGAL INTEREST RATE

State	Legal Rate	Maximum Rate	Penalty for Exceeding Maximum Rate
Alabama	8	8	Loss of all interest
Alaska	8	12	Loss of double interest
Arizona	6	10	No penalty
Arkansas	6	10	Loss of principal and interest
California	7	No limit	No penalty
Colorado	8	24	No penalty
Connecticut	6	12	Loss of principal and interest, also fine and imprisonment
Delaware	6	6	Loss of principal
Dist. of Columbia	6	6	Loss of all interest
Florida	8	10	Loss of all interest
Georgia	7	8	Loss of interest over 8 percent
Idaho	7	12	Loss of interest and 10 percent per year of principal
Illinois	5	7	Loss of all interest
Indiana	6	8	Loss of interest over 8 percent
Iowa	6	8	Loss of interest and 8 percent per year of principal
Kansas	6	10	Loss of interest over 10 per cent, and also a sum equal to the excess stipulated for
Kentucky	6	6	Loss of interest over 6 percent
Louisiana	5	8	Loss of all interest
Maine	6	No limit	No penalty
Maryland	6	6	Loss of interest over 6 percent
Massachusetts	6	No limit	No penalty

State	*Legal Rate*	*Maximum Rate*	*Penalty for Exceeding Maximum Rate*
Michigan	5	7	Loss of all interest
Minnesota	6	10	Loss of principal and interest
Mississippi	6	8	Loss of all interest
Missouri	6	8	Loss of excess interest
Montana	8	12	Loss of double interest
Nebraska	7	10	Loss of all interest
Nevada	7	12	No penalty
New Hampshire	6	6	Loss of three times the excess of interest charged
New Jersey	6	6	Loss of all interest
New Mexico	6	12	Loss of double excess interest
New York	6	6	Loss of principal and interest
North Carolina	6	6	Loss of all interest
North Dakota	7	12	Loss of all interest
Ohio	6	8	Loss of excess of interest over 6 percent
Oklahoma	6	10	Loss of all interest
Oregon	6	10	Loss of principal and interest
Pennsylvania	6	6	Loss of excess interest
Rhode Island	6	30 on loans exceeding $50	Loss of principal and interest
South Carolina	7	8	Loss of all interest
South Dakota	7	12	Loss of all interest
Tennessee	6	6	Loss of excess interest and also a fine
Texas	6	10	Loss of all interest
Utah	8	12	Loss of principal and interest
Vermont	6	6	Loss of excess interest
Virginia	6	6	Loss of all interest

State	Legal Rate	Maximum Rate	Penalty for Exceeding Maximum Rate
Washington	6	12	Loss of double interest
West Virginia	6	6	Loss of all interest over 6 percent
Wisconsin	6	10	Loss of all interest
Wyoming	8	12	Loss of all interest